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Report To The Congress

OF THE UNITED STATES

Private Mineral Rights Complicate The Management Of Eastern Wilderness Areas

Since 1975, the Congress has expanded the National Wilderness Preservation System to areas of eastern national forest lands. Many of these eastern lands contain significant amounts of private mineral rights; as a result, the Department of Agriculture's Forest Service experienced management and legal problems in trying to preserve these lands and control private mineral development. In addition, recent attempts by the federal government to acquire private mineral rights in eastern wilderness areas have caused considerable controversy and congressional debate because of the high costs associated with these purchases. These problems could increase because many other areas under consideration for wilderness designation in the east contain private mineral rights.

GAO believes that consideration of private mineral rights is important in deciding whether other eastern lands should be designated as wilderness. However, the Forest Service did not provide information regarding private mineral rights and their potential acquisition costs when it submitted wilderness recommendations to the Congress in 1979. Therefore, GAO recommends that the Secretary of Agriculture direct the Forest Service to analyze the potential conflicts and costs associated with private mineral rights in potential wilderness areas and provide this data to the Congress. In addition, GAO believes that the Congress should consider providing further guidance to the Forest Service by specifying what action should be taken regarding private mineral rights in eastern wilderness areas.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and
The Speaker of the House of Representatives

Expansion of the National Wilderness Preservation System is a high priority to the Congress. This report, which was requested by James A. McClure, Chairman, Senate Committee on Energy and Natural Resources, discusses one of the major problems in expanding the wilderness system on eastern national forest lands--the fact that over 955,000 acres of the mineral rights in these designated or potential eastern wilderness areas remain privately owned and subject to development. Experience has shown that protecting wilderness areas from private mineral development could be difficult and expensive.

Copies of the report are being sent to the Director, Office of Management and Budget, the Secretary of Agriculture and the Secretary of the Interior.

Charles A. Bowsher

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

PRIVATE MINERAL RIGHTS COMPLICATE THE MANAGEMENT OF EASTERN WILDERNESS AREAS

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D I G E S T

In passing the 1964 Wilderness Act, the Congress created the National Wilderness Preservation System to preserve and protect natural and pristine federal lands in national forests, parks, and wildlife refuges. This act was supplemented by the Eastern Wilderness Act of 1975, which designated specific eastern national forest lands as wilderness areas. Generally, these acts restrict activities in wilderness areas to recreational, scenic, scientific, educational, conservation, and historical uses by the public. (See p. 1.)

As of May 1984, the Forest Service, Department of Agriculture, was managing 38 designated wilderness areas in eastern national forests. The Service also has identified 154 potential eastern areas that could be designated by the Congress as wilderness. The Congress has already proposed legislation to include several of these areas in the wilderness system.[1] (See p. 4.)

PRIVATE MINERAL RIGHTS POSE MANAGEMENT DIFFICULTIES IN EASTERN WILDERNESS AREAS

Eastern wilderness areas contain extensive private mineral rights. These rights, which were retained by private landowners when the government purchased national forest lands in the early 1900's, give owners the ability to

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[1]On June 19, 1984, the President signed legislation creating 15 additional eastern wilderness areas, for a total of 53 designated areas. Because of the timing of this legislation, information on the private mineral rights in these 15 areas was not readily available to GAO. As a result, this report includes the latest statistics available prior to the passage of this recent legislation. Other legislation is pending to create additional eastern wilderness areas.

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enter the wilderness areas for mineral exploration and development. Although the federal government has some regulatory control, it cannot deny the development of these private mineral rights. Private mineral rights have, therefore, created legal and management problems for the Forest Service in managing the eastern wilderness areas. In effect, the Forest Service is faced with the potential conflict of allowing private mineral development while trying to preserve wilderness areas in their natural condition as intended by wilderness legislation. (See p. 2.)

Recent attempts by the federal government to acquire private mineral rights and prevent development in eastern wilderness areas have caused considerable controversy and congressional debate primarily because of the high costs associated with these purchases. For example, the Forest Service estimated that acquiring the private mineral rights under 640,000 acres in Minnesota's Boundary Water Canoe Area Wilderness could cost as much as $100 million. (See p. 7.)

GAO ASKED TO STUDY PROBLEMS RESULTING FROM PRIVATE MINERAL OWNERSHIP

At the request of the Chairman of the Senate Energy and Natural Resources Committee, GAO studied the problems associated with private mineral rights in eastern wilderness areas. Because of the extensive interest in the expansion of the wilderness system, the Chairman agreed that GAO should issue the report to the Congress. GAO's review concentrated on national forest lands managed by the Forest Service in 33 eastern states because of the extensive private mineral rights located in the designated or potential wilderness areas on these lands. GAO found that

- --the legal and administrative problems that the Forest Service has already experienced could increase, and
- --more information regarding private mineral rights should be provided to the Congress before it creates additional eastern wilderness areas.

PROBLEMS EXIST AND COULD INCREASE

The Forest Service has experienced problems resulting from the possible development of private mineral rights in four designated and one potential eastern wilderness areas.[2] Further, Forest Service officials have identified 15 additional areas (2 designated wilderness areas and 13 potential areas) where private mineral rights are expected to be developed. (See p. 7.)

One current problem area is in the Beaver Creek Wilderness Area, Kentucky, where 99 percent of the mineral rights are privately owned. The owner of most of these rights submitted a plan to mine coal, and the Forest Service determined that the proposed mining could be destructive to the wilderness area and attempted to acquire the mineral rights. However, after 5 years of negotiations, the government and the owner have been unable to agree on a price. The Forest Service, therefore, believes that it has no alternative but to allow mining. If mining does occur, the Forest Service plans to use existing regulatory and enviromental controls to lessen the potential environmental damage. (See p. 9.)

In an area currently being considered by the Congress for wilderness designation in Pennsylvania, where 95 percent of the mineral rights are privately owned, two oil wells are currently operating and timber has been cleared for an additional 19 wells. In January 1984, several environmental organizations filed a lawsuit against the Forest Service and the private mineral owners. The lawsuit contends that this mineral development violates several laws designed to protect the environment. (See p. 13.)

Based on these and other experiences, Forest Service officials believe they are in a dilemma because they cannot legally prevent private

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[2]These areas are the Boundary Waters Canoe Area Wilderness, Minnesota; Otter Creek Wilderness Area, West Virginia; Cranberry Wilderness Area, West Virginia; Beaver Creek Wilderness Area, Kentucky; and one potential wilderness area in the Allegheny National Forest, Pennsylvania.

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mineral development and doubt that the Congress will appropriate the funds needed to acquire the mineral rights. (See p. 17.)

GAO believes that the Forest Service's concern is well-founded and that the problems experienced thus far could increase. Specifically, GAO found that 103 of the 192 designated and potential eastern wilderness areas contain private mineral rights covering about 955,000 acres. Many of these areas have mineral development potential that could present the Forest Service with many of the same administrative and legal problems currently being experienced. (See p. 7.)

CONGRESS NEEDS ADDITIONAL INFORMATION ON PRIVATE MINERAL RIGHTS IN EASTERN WILDERNESS AREAS

In 1979 the Forest Service submitted recommendations to the Congress for expanding the wilderness system. The Congress is currently considering designation of additional wilderness areas based on these recommendations. Forest Service officials told GAO, however, that the wilderness recommendations are flawed because they were made without analysis of the potential problems or costs associated with private mineral rights. (See p. 21.)

GAO's analysis of the data supporting Forest Service's wilderness recommendations confirms that private mineral rights and their potential effect on wilderness management were not considered. As a result, GAO believes that the Congress does not have all the information it needs to act on the Forest Service's wilderness recommendations. (See p. 22.)

The Forest Service is currently reevaluating all its wilderness recommendations. GAO believes this reevaluation, scheduled for completion in 1985, provides the Forest Service with the opportunity to develop information on the potential management problems and the costs associated with private mineral rights. (See p. 23.)

RECOMMENDATION TO THE SECRETARY OF AGRICULTURE

Because the Forest Service did not analyze the potential problems and costs associated with private mineral rights when it developed its

1979 wilderness recommendations, GAO recommends that the Secretary direct the Forest Service to do this type of analysis when reevaluating its wilderness recommendations. This analysis should include for each area consideration of: private mineral development potential, the government's ability to control mineral development if it occurs, the need to acquire private mineral rights, and a range of estimated acquisition costs.

For those areas already in legislative proposals being considered by the Congress for wilderness designation, the scheduled 1985 completion date for the reevaluation may come after congressional action. GAO recommends, therefore, that analyses of these particular areas be provided to the Congress prior to their deliberations.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Expansion of the eastern wilderness system warrants special consideration because of private mineral rights. Therefore, before the Congress enacts legislation to create additional eastern wilderness areas, it may want to (1) consider the extent and development potential of private mineral rights in these areas and (2) specify whether the Forest Service should acquire the mineral rights or allow mining in the wilderness areas.

Although acquisition of private mineral rights offers the most effective means to protect wilderness areas from private mineral development, it could be difficult to determine the value of private mineral rights and expensive to acquire them. Conversely, allowing mineral development, although it would minimize the need for acquisition funds, could detract from the "natural and pristine" qualities protected in wilderness areas.

Further, 23 of the 38 existing eastern wilderness areas contain private mineral rights, and proposals to develop these minerals have already been received in two. The Congress may, in the future, have to decide either to acquire these rights to prevent development or allow mining.

Tear Sheet

AGENCY COMMENTS

Written comments on a draft of this report were received from the Department of Agriculture (app. IV) and the Department of the Interior (app. V).

Agriculture generally agreed with GAO's findings. However, Agriculture said that much of the analysis concerning private mineral rights that GAO recommends is already being done under existing regulations. GAO has reviewed these regulatory requirements and found that they do not require the kind of analysis envisioned by GAO's recommendation. The analysis required by the regulations pertains largely to federal minerals, rather than to private mineral rights. Further, during GAO's review, Forest Service officials told GAO that they were not sure if information regarding private mineral rights was being developed.

Agriculture also agreed that estimates of potential acquisition costs of private mineral rights should be developed and provided to the Congress. Agriculture expressed concern, however, about making such information public knowledge because it could provide a basis for litigation by private mineral owners.

Therefore, Agriculture suggested providing the Congress a listing of the per-acre selling price of comparable mineral rights, using the highest and lowest prices as an indication of estimated values. Agriculture's suggestion could be a means of satisfying GAO's recommendation. Other means of developing and/or providing these data also exist.

Interior believes that GAO's report was generally factually correct and comprehensive and suggested some technical changes. Changes were made to the text where appropriate.

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I A discussion of the federal government's authority to control development of private mineral rights

II Three federal agencies which administer wilderness programs have attempted to exclude areas with private mineral rights

III Designated and potential eastern wilderness areas which contain private mineral rights

IV Letter dated April 12, 1984, from the Department of Agriculture

V Letter dated April 17, 1984, from the Department of the Interior

VI Letter dated March 16, 1983, from Chairman, Committee on Energy and Natural Resources, United States Senate

CHAPTER 1

INTRODUCTION

Since 1964, the Congress has preserved areas of federal lands in a natural wilderness condition for the benefit and enjoyment of present and future generations. While the western United States has a relative abundance of such lands, the eastern United States[1] is not so fortunate. In the mid-1970s, the Congress, recognizing a need to establish and preserve wilderness areas in the east, enacted legislation to create eastern wilderness areas and directed that other potential areas be studied. This report discusses one of the major problems in expanding the National Wilderness Preservation System on eastern national forest lands--the fact that over 955,000 acres of the mineral rights in these designated or potential wilderness areas (totaling 2-1/2 million acres) remain privately owned and subject to development. Experience thus far has shown that protecting wilderness areas from private mineral development can be difficult and expensive.

LEGISLATIVE BACKGROUND AND HISTORICAL PERSPECTIVE

The National Wilderness Preservation System was established by the Wilderness Act of 1964, Public Law 88-577. The act's purpose is to provide, for present and future generations, a long-lasting nationwide system of pristine, roadless, and undeveloped wilderness areas to be preserved and protected in their natural condition. The system is composed of federal lands in national forests, national parks, and national wildlife refuges which

--are primarily affected by the forces of nature and not people;

--have outstanding opportunities for solitude or primitive recreation;

--are comprised of at least 5,000 acres or are of sufficient size to make practicable its preservation and use in an unimpaired condition; and

--may contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The act further provides that, except for existing private rights, such activities as commercial enterprises, permanent or temporary roads, use of motorized vehicles or equipment, and structures or installations are prohibited. For example, Congress

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[1]The eastern states are Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

designates most wilderness areas "subject to valid existing rights," which acknowledges the property rights of the mineral owner including the right to develop private minerals. With regard to federally owned minerals in wilderness areas, the act permitted, subject to wilderness protection regulations, mining and mineral leasing activities until December 31, 1983.[2] After that time, no new mineral leases could be issued but development of issued leases, with their accompanying "valid existing rights," could occur subject to federal controls and regulations.

Besides establishing a number of wilderness areas, the 1964 act also directed the Forest Service and the Department of the Interior's National Park Service and Fish and Wildlife Service to study additional areas for possible inclusion in the National Wilderness Preservation System. Subsequently, the Federal Land Policy and Management Act of 1976 directed Interior's Bureau of Land Management to study its lands for potential wilderness areas. While Interior's agencies recommended both western and eastern areas, Forest Service officials were reluctant to recommend eastern lands for wilderness designation because in their opinion the previously logged forests did not meet the act's requirements for pristine, roadless, and undeveloped land.

THE CONGRESS DESIGNATES EASTERN NATIONAL FOREST WILDERNESS AREAS AND WILDERNESS STUDY AREAS WITH PRIVATE MINERAL RIGHTS

Before 1975, only 4 of the nation's 95 designated wilderness areas on Forest Service lands were located in the eastern states. The Congress, finding an "urgent need" to designate wilderness lands in the populous eastern United States, passed Public Law 93-622, commonly referred to as the Eastern Wilderness Act of 1975. This act, supplementing the 1964 Wilderness Act, designated

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[2]The Mineral Leasing Act of 1920, as amended, authorizes the Secretary of the Interior to dispose of deposits of oil, gas and certain other minerals on federally owned lands, by lease, license, and permit.

16 wilderness areas and 17 wilderness study areas[3] on eastern national forest lands and provided that the Secretary of Agriculture recommend additional wilderness study areas for congressional consideration. It further requires that the study areas be managed in a manner that maintains their potential for inclusion in the National Wilderness Preservation System.

The Congress designated these 16 areas as wilderness despite the Forest Service's position that the "restored" eastern forest lands do not meet wilderness suitability requirements of pristine, roadless, undeveloped federal land. Unlike the national forests in Alaska and the western United States, which were created from public domain land owned by the federal government, the eastern national forests originally had been purchased, primarily under the authority of the Weeks Act of 1911,[4] from private landowners. This land had been heavily logged during the nineteenth and early twentieth centuries. The unavailability of large tracts of public land in the East and the difficulty with purchasing the surface and subsurface rights (fee simple ownership) necessitated the often piecemeal purchase of forest land from private owners. As a result, fragmented ownership patterns of private lands and minerals exist within eastern national forests. In many areas where it was not possible to acquire the mineral rights, the Forest Service purchased surface rights only. In fact, in areas with high mineral potential, the Forest Service's ownership of mineral rights is small. As a result, only about 34 percent of the subsurface mineral rights and about 51 percent of the surface rights of eastern national forests are federally owned, a situation that remained as the lands became or were considered for wilderness areas.

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[3]The wilderness areas are: Sipsey, Alabama; Caney Creek, Arkansas; Upper Buffalo, Arkansas; Bradwell Bay, Florida; Beaver Creek, Kentucky; Presidential Range-Dry River, New Hampshire; Joyce-Kilmer Slickrock, North Carolina and Tennessee; Elliott Rock, South Carolina, North Carolina, and Georgia; Gee Creek, Tennessee; Bristol Cliffs, Vermont; Lye Brook, Vermont; James River Face, Virginia; Dolly Sods, West Virginia; Otter Creek, West Virginia; Rainbow Lake, Wisconsin; and Cohutta, Georgia and Tennessee. The wilderness study areas are: Belle Starr Cave, Arkansas; Dry Creek, Arkansas; Richland Creek, Arkansas; Sopchoppy River, Florida; Rock River Canyon, Michigan; Sturgeon River, Michigan; Craggy Mountain, North Carolina; Wambaw Swamp, South Carolina; Mill Creek, Virginia; Mountain Lake, Virginia; Peters Mountain, Virginia; Ramsey's Draft, Virginia; Flynn Lake, Wisconsin; Round Lake, Wisconsin; Cranberry, West Virginia; Big Frog, Tennessee; and Citico Creek, Tennessee.

[4]The Weeks Act, as amended [16 U.S.C. 480, 500, 515-519, 521, 552, 563], provided legislative authority for federal acquisition of forest land.

Congress was Aware of Private Mineral Rights and Potential Conflicts

The legislative history of the 1975 Eastern Wilderness Act indicates that congressional concern existed that mining would be incompatible with wilderness management. During deliberations, it was recognized that 7 of the 16 wilderness areas and 7 of the 17 wilderness study areas contained private minerals which could eventually be developed and, therefore, impair or destroy wilderness values. (See App. I for discussion of rights of private mineral owners.) As a result, the act established a procedure to assist the Secretary of Agriculture in protecting the 16 designated wilderness areas. Section 6(b)(1) of the act allows the Secretary of Agriculture to acquire "such lands, waters, or interests" in the 16 wilderness areas by purchase, gift, condemnation, or exchange as determined to be necessary or desirable for the purposes of the act. The act authorized $5 million to be appropriated for the acquisition of private lands and minerals. The Secretary's authority to acquire lands or minerals is discretionary and not mandatory.

Moreover, in section 6(b)(3), the act describes the limited circumstances under which the Secretary of Agriculture can condemn lands in these 16 wilderness areas.[5] It provides that if a planned use of private lands or minerals is determined to be incompatible with wilderness management, and the private owner is unwilling or fails to discontinue the incompatible use, the Secretary may condemn the property. To allow the Secretary to determine if proposed changes in private land uses are compatible with wilderness objectives, the act requires a private owner to notify the Secretary at least 60 days prior to any change in use "which will result in any new significant construction or disturbance of land surface or flora or will require the use of . . . motorized equipment." Although the act directs the Secretary to determine if proposed changes are compatible with wilderness objectives, it does not specifically preclude mining or provide guidance as to what degree of mining could be compatible.

ADDITIONAL EASTERN AREAS HAVE BEEN DESIGNATED AND ARE BEING CONSIDERED FOR WILDERNESS DESIGNATION

As of June 1984, the Congress had created a total of 38 eastern national forest wilderness areas. In addition, the Forest Service has surveyed all eastern national forests and identified 154 tracts of land as potential wilderness areas. Eighty-five of

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[5]The 1964 act does not provide for condemnation in wilderness areas. Condemnation is generally needed when a landowner is unwilling to sell at the government's offered price or when the government cannot acquire clear title to the property without judicial determination. Acquisition by condemnation is a means of last resort.

these areas have been recommended to the Congress for wilderness designation. The remaining 69, known as further planning areas, are being studied by the Forest Service for their potential suitability as wilderness. As mentioned earlier, the recommended and further planning areas are required to be managed by the Forest Service so as to preserve their wilderness characteristics. They are not, however, part of the National Wilderness Preservation System until the Congress has passed a law designating them as wilderness.

OBJECTIVES, SCOPE, AND METHODOLOGY

On March 16, 1983, the Chairman, Senate Committee on Energy and Natural Resources, requested that we review the problems associated with the management of private mineral rights in potential and designated eastern wilderness areas.[6] He specifically asked that we

--identify eastern wilderness areas with problems resulting from private mineral rights, including a discussion of mineral deposits and potential acquisition costs;

--discuss the problems associated with managing and acquiring private mineral rights in eastern wilderness areas; and

--discuss less costly alternatives or options available to the federal government to resolve these conflicts.

To identify designated and potential eastern wilderness areas with private mineral rights, we gathered and analyzed information on the Forest Service's designated and potential wilderness areas. For these areas, Forest Service provided data on private land and mineral ownership, federal mineral leases or lease applications, mineral development potential, industry interest in developing minerals, and public interest in stopping development. At our request, Bureau of Mines officials rated the mineral resource potential of each area, based on available mineral data from Bureau of Mines and U.S. Geological Survey mineral reports.

To identify problems associated with managing and acquiring private mineral rights in eastern wilderness areas, we reviewed the management practices of the Department of the Interior's Bureau of Land Management, National Park Service, and Fish and Wildlife Service and the Department of Agriculture's Forest Service. Our review concentrated primarily on eastern lands managed by the Forest Service because of the preponderance of private minerals in its lands and problems it has encountered in wilderness areas. (See App. II for a discussion of how Interior's agencies have attempted to exclude areas that contain private minerals from wilderness designation.)

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[6]The Chairman was also interested in development problems resulting from federal mineral leases in eastern wilderness areas.

To obtain information on the problems associated with private mineral rights, we reviewed agencies' records and files, management plans, planning documents, environmental statements, policy manuals and related documents, and U.S. Geological Survey and Bureau of Mines mineral reports and studies of wilderness lands. In addition, we analyzed in detail Forest Service's management of four designated wilderness areas and four potential wilderness areas that were identified by agency officials and representatives of environmental organizations as having problems because of private mineral rights. Agency officials believed that analysis of these areas would reveal the range of problems which could result from private mineral ownership in wilderness areas.

To identify less costly alternatives or options to resolve private mineral conflicts, we interviewed agency officials regarding wilderness programs, mineral management and ownership problems, and legal and fiscal management problems. We spoke with the land acquisition staffs of the Forest Service, National Park Service, and the Army Corps of Engineers; attorneys in the Departments of the Justice and Agriculture; and the staff of Interior's Land and Water Conservation Fund's Land Policy Group. We reviewed agency acquisition policies, including the Land and Water Conservation Fund policy statements, the Corps of Engineers' acquisition policies, and the Department of Justice's acquisition-related policy documents. In addition, we met with representatives of state governments, the mining industry (including private mineral owners), and environmental groups.

We conducted our review at the Departments of the Interior, Agriculture, Army, and Justice in Washington, D.C., and at the Forest Service's eastern regional offices in Milwaukee, Wisconsin and the southern regional office in Atlanta, Georgia. Other regional offices visited were the Fish and Wildlife Service in Atlanta, Georgia, and Twin Cities, Minnesota; the National Park Service in Atlanta, Georgia; the Bureau of Land Management in Alexandria, Virginia; and the Bureau of Mines in Pittsburgh, Pennsylvania. Our audit work was conducted primarily from February 1983 to September 1983.

Our review was conducted in accordance with generally accepted government auditing standards.

CHAPTER 2

THE POTENTIAL FOR PRIVATE MINERAL DEVELOPMENT EXISTS IN MANY EASTERN WILDERNESS AREAS

Over half of the designated and potential eastern wilderness areas on national forest lands contain private mineral rights, many with the potential for economic mineral development. The problems that already have occurred in certain areas containing private mineral rights demonstrate the potential difficulties the Forest Service may encounter in other areas. Difficulties to date, some of which the Forest Service has been grappling with for years, have centered around the following:

--uncertainty about the limits to the Forest Service's authority to regulate private mineral development to protect wilderness values;

--the potentially high cost of valuing and acquiring private mineral rights; and

--administrative burdens and protracted litigation associated with proposals to develop private mineral rights.

While the Forest Service has experienced problems because of private mineral rights in only four designated areas and one potential wilderness area to date, Forest Service officials expressed concern that these problems could increase because many other areas under consideration for wilderness contain private mineral rights. For example, Forest Service officials identified 15 additional eastern areas where problems are expected because of the possibility that private mineral rights could be developed.

ONE-HUNDRED AND THREE DESIGNATED AND POTENTIAL EASTERN WILDERNESS AREAS CONTAIN PRIVATE MINERAL RIGHTS

In our review, we attempted to identify all the designated and potential eastern wilderness areas that contain private mineral rights. Based on our analysis of Forest Service data, we found that 103 of the 192 designated and potential wilderness areas in the east contain private mineral rights covering about 955,000 acres.[1] Most of these private mineral rights (over 730,000 acres) are in designated wilderness areas. Approximately 640,000 acres of these private minerals are located in the largest

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[1]On June 19, 1984, the President signed legislation which created 15 new wilderness areas, for a total of 53 eastern areas, and expanded 6 existing wilderness areas in New Hampshire, North Carolina, Vermont, and Wisconsin. Because of the timing of this legislation, information on the private mineral rights in these new areas was not readily available to GAO. As a result, this report includes the latest statistics available prior to the passage of this recent legislation.

eastern wilderness area on national forest land, the Boundary Waters Canoe Area Wilderness, Minnesota. Recommended wilderness areas and further planning areas contain about 130,000 acres and 95,000 acres of privately owned mineral rights, respectively. Specifically, we found that in the east:

--23 of the 38 designated wilderness areas contain private mineral rights. In five areas, about 90 percent or more of the mineral rights are privately owned. However, in the majority of these areas the federal government owns about 80 percent of the mineral rights.

--46 of the 85 recommended wilderness areas contain private mineral rights. In twenty areas, over 50 percent of the mineral rights are privately owned.

--34 of the 69 further planning areas contain private mineral rights. In seven areas, about 70 percent or more of the mineral rights are privately owned, but the federal government owns about 90 percent of the minerals in about one-third of these areas.

Twenty-two designated and potential wilderness areas with private mineral rights have thus far been identified by the U.S. Geological Survey and Bureau of Mines as having high or medium potential for economic mineral deposits. These agencies are currently preparing mineral reports for all designated wilderness and further planning areas. According to USGS and BOM officials, recommended wilderness areas are not being assessed because the Congress has not appropriated the funds to study them. The individual areas with private mineral rights and their mineral potential are detailed in appendix III.

PROBLEMS WITH ACQUIRING AND MANAGING PRIVATE MINERAL RIGHTS

Private mineral rights in 4 eastern wilderness areas and one further planning area have caused the Forest Service management problems, litigation, and administrative costs. While private mineral development has not yet occurred in the designated wilderness areas, oil wells have been drilled in the further planning area. Following is a discussion of the difficulties that have already been encountered in these 5 areas.

Acquisition of private mineral rights not considered feasible-- Boundary Waters Canoe Area Wilderness, Minnesota

The Boundary Waters Canoe Area Wilderness in the Superior National Forest, the only canoe area in the National Wilderness Preservation System, was designated by the 1964 Wilderness Act. It consists of over 1,086,000 acres of land and water (with about 1,500 miles of canoe routes) and approximately 640,000 acres of private mineral rights. Federal and state-owned minerals are not open to exploration and development. Therefore, mining in this

area could occur only as a result of private mineral rights. Efforts to preserve and protect the wilderness values of this area from private mineral development have spanned decades.

In 1967, a Forest Service analysis concluded that a private minerals acquisition program in this area would not be feasible for the following reasons.

--Final acquisition costs could not be determined. The cost to acquire all the private mineral rights was roughly estimated at $10.5 million based on recent comparable sales of like minerals in the United States and Canada. However, the report noted that the estimate was very conservative and probably "bears little relationship to the amount which might ultimately have to be paid to purchase the private mineral rights." The report cautioned that final acquisition costs in the area could exceed $100 million.

--A costly drilling program would be necessary, if condemnation of properties was pursued, to better determine the value of the private mineral rights. Exploratory drilling on only 56,000 acres in this area was conservatively estimated to cost $5 million. In addition, it was estimated that more than $1 million would likely be required to evaluate each ore body discovered.

--A private mineral rights purchase program would probably precipitate the very development which it sought to avoid--an invasion of the area by private owners for mineral exploration purposes. This would endanger the wilderness values the Forest Service was trying to protect.

As a result, no private mineral rights purchase program was undertaken. Currently, according to Forest Service officials, the threat of private mineral development is low within the Boundary Waters Canoe Area Wilderness and no applications are on file for prospecting or mining permits. However, Forest Service officials told us that the area contains significant quantities of nickel, copper, and cobalt and the mining situation could change.

An Inability to Purchase Private Mineral Rights--
Beaver Creek Wilderness Area, Kentucky

The Beaver Creek Wilderness area comprises about 4,790 acres with over 99 percent of the mineral rights and less than 1 percent of the surface rights in private ownership. One owner, a mining company, owns the mineral rights to about 4,500 acres in the wilderness, which are part of approximately 16,000 acres of private mineral rights owned by the company in the general vicinity. This company is presently mining a portion of these rights on land adjacent to the wilderness. Evidence of previous uses still remains in the wilderness, including several small abandoned deep coal mining sites, a cemetary, a bridge, and roads.

Forest Service officials have tried repeatedly to acquire the private mineral rights in Beaver Creek to preclude the possibility of mining in the wilderness area. The primary difficulty in negotiations has been the inability to reach agreement on a purchase price acceptable to both parties. The Forest Service appraised the value of the mineral rights in Beaver Creek at $300,000 and at one point expressed a willingness to offer the company as much as $1.5 million. However, the company has valued its mineral rights at $5 million and has rejected all of the Forest Service's offers. In addition, the Forest Service is reluctant to use condemnation authority, which would allow the court to establish the value of the property, because of the possibility of an excessive court-awarded settlement. Presently, according to Forest Service officials, mining will be allowed if pursued by the owner, even though it could be detrimental to wilderness values.

In 1976, shortly after the area was designated as wilderness by the Eastern Wilderness Act, the mining company proposed to explore and mine in the wilderness. Since that time, the Forest Service and the private mineral owner have been involved in litigation to determine the extent of the government's authority to regulate or control the development of private mineral rights. In 1978, a federal district court defined the limits of the Forest Service's authority to control private mineral development in the Beaver Creek Wilderness Area. The court ruled that the Forest Service can

--require the submission of plans to prospect or mine,

--impose mitigating measures which are reasonably necessary to insure the prevention of irreparable harm to the surface resources, and

--totally forbid operations which would lead to unreasonable exploitation or irreparable harm to the surface resources.

The court also ruled that neither the National Environmental Policy Act of 1969 nor the Eastern Wilderness Act of 1975 provided any additional authority to limit the development of private mineral rights. (See app. I for additional information on the Forest Service's authority to regulate private mineral rights.)

In 1978, 2 years after the mining plan was submitted, the Forest Service issued an environmental impact statement which concluded that the company's proposal to mine would be incompatible with the wilderness values of Beaver Creek and that the private mineral rights should be acquired. However, the company has never taken any action on this mining plan and the minerals have not been acquired. In 1981, a second mining proposal for another part of the wilderness was submitted by the company. Since less than one acre of the wilderness would have been affected by this mining proposal, the Forest Service decided not to challenge the mining if it occurred. The company has since notified the Forest Service that it had cancelled its plans to proceed with the second mining proposal.

To date, no mining or surface disturbance has taken place in the Beaver Creek Wilderness Area. Thus, while the Forest Service has been unsuccessful in acquiring the private mineral rights, mineral development does not appear imminent. Moreover, it has had success in the courts in assuring that no irreparable harm can be done if mining should occur.

Forest Service officials believe that the private mineral owner in Beaver Creek is threatening mineral development simply to encourage acquisition of the mineral rights. They doubt that the owner is seriously interested in mining the area. Forest Service officials cited the situation in Beaver Creek as an example of what the government could face in other wilderness areas with private mineral rights. They believe that the designation of a wilderness area with private mineral rights encourages the development or threat of development because the owner feels that a threat of mining will ensure a ready purchase by the federal government.

Private Mineral Owner Takes Legal Action Against Federal Government--Otter Creek Wilderness Area, West Virginia

About 96 percent of the mineral rights in this approximately 20,000 acre wilderness area are privately owned. One coal company owns the mineral rights to about 16,500 acres. Otter Creek, covered by second growth forest and foottrails on old railroad grades, was the scene of at least six small coal mining operations from the 1800s through the 1940s. The area has mineral development potential for coal and natural gas.

At the time of our review, the question of whether private mineral rights could be developed in this area was under litigation. In 1979, the coal company filed suit in the Federal Court of Claims charging that the designation of Otter Creek as a wilderness area under the Eastern Wilderness Act of 1975 constituted a legislative taking of their private property. However, because the company had never submitted a mining plan to the Forest Service prior to filing their law suit, the court ordered that the company first must go through the administrative procedures and determine if they could develop their mineral rights in the wilderness.

A mining plan was submitted to the Forest Service by the company on January 28, 1983. According to this mining plan, about 13 million tons of coal will be mined requiring 11 miles of road and 10 surface openings within the wilderness boundary. The company also intends to develop its oil and gas rights with a maximum of 58 wells contemplated.

The Congress Directs the Acquisition of Private Mineral Rights--Cranberry Wilderness Area, West Virginia

The Cranberry Wilderness area was one of the 17 wilderness study areas designated in the Eastern Wilderness Act. It is

located within the Monongahela National Forest and comprises about 36,550 acres, making it the second largest national forest wilderness area in the eastern United States. In 1934, this area was virtually cleared of all timber by logging operations. Careful management by the Forest Service has restored its wilderness characteristics. About 90 percent of the mineral rights, covering about 32,735 acres, are privately owned.

In January 1983, the Congress, in Public Law 97-466, designated the Cranberry Wilderness Area and directed the acquisition of the private mineral rights there to prevent development. The act directed the Secretary of the Interior to determine the fair market value of the private mineral rights within one year. As of June 1, 1984, Interior officials had completed their geologic and economic evaluations necessary to determine the value of the private mineral rights. The act requires the Secretary to acquire

--all nonfederal mineral interests within the wilderness boundaries,

--mineral interests and rights outside the wilderness which are contiguous to and owned by the owners of mineral rights in the wilderness, and

--mineral interests and rights outside the wilderness which are economically accessible only through the wilderness.

It also authorizes the payment of up to $2.2 million to the two counties where the Cranberry Wilderness is located to compensate them for lost tax revenue.

Bureau of Land Management (BLM) officials, who have been directed to handle the acquisition by the Secretary of the Interior, have expressed concern about how the purchase is to be managed and financed. At the time of our review, no one was sure what the final cost to acquire the private mineral rights will be. No ceiling on the value of the private mineral rights was placed in the act. However, the U.S. Geological Survey estimated in July 1981 that there were 18.6 million tons of privately owned recoverable coal in the wilderness area valued in place from about $14 million to $29 million.

Determining fair market value could be a major difficulty. The act authorizes the Secretary of the Interior to contract with the owner to conduct core drilling to obtain information for determining fair market value. However, the largest private mineral owner, a corporation, has informed Interior officials that it has no interest in drilling within the wilderness because of possible objections from environmental groups. It would rather determine the property's value through negotiations based on existing data. An Interior official stated that detailed mineral information exists on the resources in the center of the wilderness area but additional information is required for the southern area and parts of the northern area. Information on areas contiguous to the wilderness area for which the company could also be compensated is also needed.

An additional complication in determining the final cost of the purchase is identifying just what interests the government must acquire. In an initial meeting with BLM, company representatives said that they believed they had 12,000 acres in four areas that were outside but contiguous to the wilderness area that should be considered for acquisition. In addition, another mineral owner has contacted the government concerning acquisition of its approximate 17,000 acres of private mineral rights outside, but contiguous to, the wilderness. Agency officials stated that other mineral right owners in the vicinity may seek to have their minerals purchased by the government because they are contiguous to the wilderness area. In its April 17, 1984, response to our draft report Interior stated that, based on guidance and advice from Interior's Solicitor concerning the legal definition of contiguous, some areas considered by private mineral owners as contiguous to the Cranberry area were eliminated from consideration for purchase by BLM because of associated expense. This decision, therefore, resulted in an elimination of certain costs associated with acquisition.

Drilling is Occurring in a Potential Wilderness Area--the Allegheny Front Further Planning Area, Allegheny National Forest, Pennsylvania

Although the Allegheny National Forest currently has no designated wilderness areas, eight areas (including seven small islands) were recommended for wilderness designation and four areas were recommended for further planning by the Forest Service. While the federal government owns about 73 percent of the surface rights in the forest, about 98 percent of the mineral rights are privately owned and have high mineral potential mostly for oil and gas. The forest is located in the center of the principal oil and gas fields of Pennsylvania and it has about 10,000 operating oil and gas wells and about 60,000 abandoned wells. Between 1980 and 1982, due to high oil prices and recent improvements in recovery techniques, drilling activity substantially increased and about 700 new wells per year have been drilled.

In one of the forest's potential wilderness areas, the approximately 8,700 acre Allegheny Front Further Planning Area, exploration for oil has occurred, since its designation as a further planning area. In this area, about 95 percent of the mineral rights are privately owned, with oil pools estimated to contain 5,000 to 20,000 barrels of oil per acre. Currently, two oil wells are operating under a Forest Service permit which allows seven wells to be drilled.

In June 1982, two private mineral owners notified the Forest Service that they intended to drill an additional 28 new oil and gas wells in this area. One owner's proposal included two wells. The other owner's proposal is for 26 wells. Timber has been

cleared for the well sites and roads for 19 wells. In January 1984, a lawsuit was filed in the United States District Court for the Western District of Pennsylvania by several environmental organizations against the Forest Service and some of the private mineral owners in the Allegheny Front Area. The suit claims that the Forest Service, by processing an application for an operating plan by the owners, is violating the National Environmental Policy Act of 1969 (Public Law 91-180) and other statutes. The case is pending.

FIFTEEN AREAS IDENTIFIED AS HAVING POTENTIAL FOR PROBLEMS WITH PRIVATE MINERAL RIGHTS

As shown in appendix III, many of the actual and potential wilderness areas in addition to those discussed above have private mineral rights with development potential and thus could create further problems. Forest Service officials identified 15 additional areas where they anticipate proposals to develop private mineral rights. However, they will not be able to determine the magnitude of any potential problems in these areas until a private individual or mining company submits a proposal to develop the minerals.

Eight of the 15 areas are in the Forest Service's southern region and have potential for oil, gas and coal development. They are (1) the Four Notch Further Planning Area, Texas, where 99 percent of the mineral rights are privately owned; (2) two designated wilderness areas (Cohutta, Georgia-Tennessee; Kisatchie Hills, Louisiana); and (3) five further planning areas (Chambers Ferry, Texas; Devil's Fork, Virginia; Graham Creek, Texas; Mountain Lake, Virginia; and Rich Mountain, Georgia).

The remaining seven areas with potential for development conflicts are in the eastern region and include substantial deposits of oil, gas, coal, and fluorite. In addition to the Allegheny Front area discussed previously, three other further planning areas in the Allegheny National Forest (Clarion River, Hickory Creek, and Cornplanter) have over 88 percent private mineral rights with oil and gas development potential. The Nordhouse Dunes Recommended Wilderness Area in the Manistee National Forest in Michigan has potential for oil and gas and about 90 percent of the mineral rights are privately owned. Also, two areas of the Shawnee National Forest in Illinois, the Lusk Creek Further Planning Area and the Garden of the Gods Recommended Wilderness Area, have high potential for development of fluorite, which is used in producing steel.

LEASES AND LEASE APPLICATIONS FOR FEDERAL MINERALS COULD POSE MANAGEMENT PROBLEMS IN EASTERN WILDERNESS AREAS

According to Forest Service officials, federal mineral leases--which constitute a private mineral right--in wilderness areas could pose the same problems as privately owned minerals.

Short of acquiring the leases, Forest Service officials stated that they have limited authority to prevent development. As of midnight December 31, 1983, federal minerals within designated wilderness areas are withdrawn from the operation of the mining and leasing laws. No new leases can be issued, but previously issued leases can be developed.

Currently, about 225 oil and gas leases covering about 156,000 acres are outstanding in eastern designated and potential wilderness areas. In addition, about 393 applications for oil and gas leases covering about 350,000 acres are pending in recommended and further planning areas. During our review, we found that the Forest Service has not experienced problems with federal leases or lease applications in designated eastern wilderness areas. However, two potential wilderness areas, the Big Gum Swamp Area, Florida, and the Irish Wilderness Further Planning Area, Missouri, have been controversial because of applications for federal leases and exploration drilling permits.

In January 1983, the President vetoed legislation to designate the proposed 13,600 acre Big Gum Swamp wilderness area in the Osceola National Forest, Florida, because it would have required the federal government to purchase rights to federal leases at an estimated cost of $200 million. From July 1969 through May 1972, 41 applications for federal phosphate leases, with marketable reserves of phosphate valued at $3 billion, were filed with the government by four companies covering about 52,000 acres of the Osceola National Forest. On May 3, 1983, one company took legal action to compel the federal government to issue the mining leases for mining phosphates in the Osceola National Forest. As of June 1984, the matter was still in litigation.

One application for a federal exploration drilling permit is currently pending approval by the Bureau of Land Management, which is responsible for managing federal minerals, covering 320 acres in the Irish Wilderness Further Planning Area located in the Mark Twain National Forest, Missouri. The surface and mineral rights to this area are owned by the federal government except for some small tracts of private land. Because of this area's mineral potential, particularly for lead, it was not recommended as wilderness but is classified as a further planning area. While this area has no known record of mineral prospecting or production, drilling has been done by several mining companies north and east of the area. In addition, it is located about 45 miles north of one of the world's most productive mineral zones. In 1980, this area accounted for 89 percent of the lead produced in the U.S., as well as some zinc, silver, and copper production.

ACQUISITIONS OF PRIVATE MINERAL RIGHTS CAN LIMIT OR PREVENT DEVELOPMENT IN EASTERN WILDERNESS AREAS

Acquisition of private mineral rights offers the most effective means of limiting or preventing private mineral development. However, agency officials stated that purchasing

private mineral rights is complicated because, unlike surface rights, it is impossible to see or know exactly what the private owner is selling and the government is buying. Establishing a mutually agreeable price can be a major problem due to the many unknown and speculative values of mineral property. Moreover, methods to determine fair market value for mineral rights are unproven and subject to differences in professional opinion. Furthermore, if the minerals are determined to have economic value by the owner or the government, exploratory drilling, which is costly and involves surface disturbance, could be necessary.

The Forest Service's long term practice has been to minimize acquisition of private mineral rights. Agency officials question whether private mineral rights should be acquired to prevent their development. Further, because of the limited federal land acquisition funds in recent years, they stated that private mineral rights in eastern wilderness areas are only a small part of, and a low priority in, their overall land acquisition needs for the national forests.

We found that private mineral rights have been purchased in only one eastern wilderness area, the Dolly Sods Wilderness Area, West Virginia. The acquisition was initiated by a nonprofit conservation organization to prevent development and occurred prior to the area's designation as a wilderness. In 1973, the government purchased 15,558 acres of private mineral rights for about $570,000 under and adjacent to the Dolly Sods Scenic Area, West Virginia, a portion of which was later designated as wilderness by the Eastern Wilderness Act.

Acquisition alternatives

Based on our discussions with land acquisition officials of the three major land acquisition agencies, the Departments of the Interior, Agriculture, and Defense, we found that a range of acquisition alternatives does exist to resolve conflicts with private mineral rights. However, selection of an appropriate alternative must be site-specific and based on an in-depth analysis of individual circumstances. What may prove to be a viable alternative to resolve conflicts with private mineral rights in one area may not work in another. The major acquisition alternatives are briefly summarized below.

--Subordination of mineral rights is a procedure where the government compensates a private mineral owner for the right to impose restrictions on mineral development. For example, the government could compensate the owner for the additional costs of removing mining equipment from the public's view. Although some federal agencies have used this method with success, Forest Service officials told us that, in general, it is only effective when the cost of subordination does not exceed the cost to acquire the mineral rights.

--Exchanges of private mineral rights for comparable federal lands or minerals, although simple in concept, can be complex due to requirements for mineral appraisals and negotiations. Disagreements over mineral values, such as occurred in the Beaver Creek Wilderness Area, frequently prolong the exchange process. State and local concerns about changes in ownership patterns and mineral revenue sharing also may impose political obstacles to some exchange proposals. In the eastern states, limited comparable federal lands and minerals can make exchanges even more difficult.

--Lands or mineral rights can be donated by private owners to the federal government. Private mineral owners can donate their property and receive tax advantages from the donation. However, donations can result in extensive legal fees to the federal government for title searches for such properties. Agency officials were divided in their opinion as to the soundness of this approach.

--Condemnation is authorized for use by the Secretary of Agriculture in wilderness areas designated under or pursuant to the Eastern Wilderness Act of 1975 when planned uses of property rights are incompatible with wilderness values. Forest Service officials said that condemnation is a drastic solution. The risks are high in terms of cost and the court-awarded settlements can be virtually any amount. As of the time of our review, it had not been used by the Forest Service to acquire private mineral rights because of the possibility that a court settlement could exceed the $5 million authorized in the act.

--Monetary credits, a new and unique funding technique, can be given in lieu of a directly appropriated cash outlay for private mineral rights and can be applied to offset payments due the federal government. For example, to pay for the purchase of the private mineral rights in the Cranberry Wilderness Area, section 4(c)(2)(B) of Public Law 97-466, provides that monetary credits can be given instead of cash and used against that portion of payment, bonus payments, rental or royalty payments due the federal government on any mineral leases "or other federal property competitively won or otherwise held." According to Forest Service officials, this device was used because previous attempts at mineral exchanges were unsuccessful. Because of the potential implications for increased use of monetary credits as a funding device to purchase land and minerals, we will address the issue in more detail in a forthcoming report.

UNCERTAINTY EXISTS ABOUT PRIVATE MINERAL DEVELOPMENT IN EASTERN WILDERNESS AREAS

Based on our discussions with Forest Service officials, private mineral owners, and representatives of environmental organizations, it is clear that a great deal of concern exists

regarding the expansion of the wilderness system in the eastern states. This concern is due to the extensive amounts of private mineral rights in eastern wilderness areas and the potential conflicts expected in protecting these areas. From these discussions we found divergent opinions as to whether private mineral development could be compatible with wilderness management.

While some Forest Service officials believe that mining is not compatible with eastern wilderness management, others believe that under some circumstances it could be. These officials stated that the Congress should consider allowing development of private mineral rights in those areas where the effects of mining would be limited and acquisition costs would be prohibitive. They believe mining could be considered a compatible use in some eastern wilderness areas, especially if the resulting surface disturbance would be limited and temporary. These officials noted that most lands comprising designated and potential eastern national forest wilderness are not pristine, have been heavily logged in the past, and contain extensive private ownership. Thus, they do not strictly meet the 1964 act's criteria for wilderness. In addition, they emphasized that eastern national forests could naturally reclaim themselves from the effects of mining after development ceases. Further, various state and federal laws can assist in controlling the effects of mineral development. (See app. I.)

Private mineral owners were mixed in their opinion of whether mining could ever occur in wilderness areas. In general, however, they believed that if the government prevents them from developing their minerals it should either acquire the mineral rights or adequately compensate them for lost revenues.

Representatives of environmental organizations with whom we spoke believed that mining generally would be incompatible with wilderness management. However, they stated that they could accept some limited mining in some areas. For example, underground mining or directional drilling could allow minerals to be extracted with minimal surface disturbance.

Some Forest Service officials questioned the wisdom of acquiring private mineral rights to prevent development. In addition to the problems associated with costs and determining value, Forest Service officials told us that several minerals management policy questions are raised and should be resolved before the federal government acquires private mineral rights including:

--How should the minerals be managed by the federal government after they are acquired? Can the minerals ever be developed? If so, what conditions must exist before development is allowed?

--What are the local and national economic impact (lost opportunity costs) and the national security implications of preventing the timely development of valuable mineral deposits?

Because of these problems, Forest Service officials told us that they believe the Congress should provide more direction regarding how far, and at what cost, the Forest Service should go to prevent the development of private mineral rights. Presently, Forest Service officials believe they are in a dilemma because there is scarce funding available to acquire private mineral rights. At the same time, any decision to allow mining in wilderness areas could subject the federal government to lawsuits from environmental organizations.

CONCLUSIONS

We do not believe that there is cause for alarm that widespread private mineral development will occur in eastern wilderness areas. However, development proposals can be expected in some areas because of their present or future economic mineral potential. The timing, frequency, and location of these proposals are difficult to predict. In those areas where private mineral development is imminent, the federal government faces two choices: allow development or acquire the mineral rights.

Our review shows that in those areas where owners develop or propose development of their mineral rights, such as in the Allegheny Front Further Planning Area and the Beaver Creek Wilderness Area, the Forest Service is faced with the dilemma of protecting wilderness values without infringing upon the legal property rights of private owners. In these instances, although state and federal laws can assist in controlling private mineral development, the Forest Service has little authority to prevent mineral owners from exercising reasonable use of their property rights. Forest Service officials believe, and we agree, that without specific guidance from the Congress on how to manage areas with private mineral rights, the problems experienced thus far could increase if additional eastern lands with private mineral rights are designated as wilderness areas. Further, specific guidance would ensure that the areas are managed in the manner the Congress desires.

Although we believe that environmental protection is of prime concern in wilderness areas, we also believe that, because of potentially high costs, acquisitions of private mineral rights should occur only in those areas where it can be demonstrated that mineral development is economically feasible, is likely to occur, and would be detrimental to wilderness values. As discussed, attempts by the Forest Service to acquire private mineral rights in the Beaver Creek Wilderness Area have been unsuccessful due to the difficulty involved in determining the value of private mineral rights and the potentially high costs involved. Based on our discussions with federal land acquisition officials, we believe the government could experience similar problems in other areas where attempts are made to acquire private mineral rights.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Expansion of the eastern wilderness system will continue to warrant special consideration because of private mineral rights. Therefore, before the Congress enacts legislation to create additional eastern wilderness areas, it may want to (1) consider the extent and development potential of private mineral rights in these areas and (2) specify whether the Forest Service should acquire the mineral rights or allow mining in the wilderness area.

Although acquisition of private mineral rights offers the most effective means to protect wilderness values from private mineral development, it could be expensive as well as difficult to determine the value of the private mineral rights. Conversely, allowing mineral development, although it would minimize the need for acquisition funds, could detract from the wilderness qualities of an area.

Further, 23 existing eastern wilderness areas contain private mineral rights and proposals to develop minerals have already been received in two of them. The Congress in the future may have to decide whether to acquire these rights to prevent development or allow mining.

CHAPTER 3

ADDITIONAL INFORMATION ON PRIVATE MINERAL RIGHTS IN EASTERN WILDERNESS AREAS IS NEEDED

The Roadless Area Review and Evaluation (RARE II), a Forest Service study which includes recommendations to the Congress for expanding the wilderness system on national forest lands, is a key input into congressional wilderness deliberations. We found that RARE II, which was submitted to the Congress in 1979, did not include information about private mineral rights and their potential effect on wilderness management. Although the Forest Service has subsequently provided some information about private mineral rights to pertinent congressional committees considering wilderness legislation, more information is needed. This information could be developed during the current Forest Service reevaluation of its RARE II recommendations.

ROADLESS AREA REVIEW AND EVALUATION (RARE II)--FOREST SERVICE'S RECOMMENDATIONS FOR EXPANSION OF THE NATIONAL WILDERNESS PRESERVATION SYSTEM

The purpose of the RARE II study[1] was to identify roadless, undeveloped federal lands in national forests nationwide for inclusion in the National Wilderness Preservation System. Further, it was to select areas identified as nonwilderness areas which would remain open to development and other activities. In the RARE II three-phase process, the lands were inventoried, evaluated, and allocated to three categories: wilderness, nonwilderness, and further planning. The wilderness category includes areas recommended to the Congress for designation as wilderness. Nonwilderness lands are to be opened to all land use activities. Further planning areas are to be studied for consideration of all uses, including wilderness. Almost 3,000 roadless areas encompassing 62 million acres in 38 states were evaluated.

Due to the magnitude of the RARE II recommendations and the number of areas involved nationwide, the Congress decided that a nationwide wilderness bill would be difficult to review and process. As a result, the Congress decided to have each state delegation introduce separate wilderness proposals so that wilderness recommendations could be considered on a more manageable state-by-state, individual, or geographic regional basis.

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[1]Forest Service's first effort to identify lands suitable for recommendation for wilderness--Roadless Areas Review and Evaluation (RARE), was criticized by both environmentalists and some mining industry representatives because some land with wilderness potential was not identified and the mineral potential of some land was not adequately evaluated. Therefore, a second study (RARE II) was initiated in early 1977.

Information about private mineral rights was not provided in RARE II study

Federal minerals were one of several resources considered in the RARE II process. Other important resource considerations included wilderness values, recreation, timber, and wildlife. In February 1982 we issued a report[2] that evaluated whether the Forest Service's RARE II study adequately addressed the mineral potential of lands recommended for wilderness. In that report, we found that the federal mineral data in the RARE II study contained several inaccuracies. For example, potential wilderness areas were rated as having little or no mineral potential when they should have been rated as having unknown potential. Because knowledge of potential mining conflicts is important in the wilderness decisionmaking process, we recommended that the Congress hold off any decision on future wilderness designation until the Department of Agriculture corrected the mineral data showing the true extent of its mineral knowledge of potential wilderness areas. The Forest Service agreed that the Congress needs the best information available in arriving at its decisions on wilderness designations and stated that it would clarify this data for the Congress.

During this review, we found additional weaknesses with the RARE II study. According to Forest Service officials, the RARE II study did not include information regarding private mineral rights. Furthermore, the RARE II wilderness recommendations were made without consideration of the management problems which could result because of the presence of private mineral rights or the potential costs to acquire these rights to protect wilderness values. The recommendations were made primarily on the basis of an assessment of each area's wilderness values, geographic location, public support for wilderness, and the economic development potential of each area.

Forest Service officials developed information regarding private mineral rights for eight areas in the Allegheny National Forest, Pennsylvania, which were recommended for wilderness study in RARE II. However, the information was not incorporated in the final RARE II study submitted to the Congress. Our review of the RARE II data confirms that the study did not include information regarding private mineral rights and their potential acquisition costs. Specifically, we found that the data which supports Forest Service wilderness recommendations lacks any analyses of private mineral rights.

Forest Service officials familiar with the RARE II evaluation told us that they considered dropping areas from wilderness consideration that contained private mineral rights. However, the idea was rejected by the then Assistant Secretary of Agriculture

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[2]Mineral Data in the Forest Service's Roadless Area Review and Evaluation (RARE II) is Misleading and Should be Corrected, GAO/EMD-82-29, Feb. 4, 1982.

because it would have sharply reduced the number of areas available in the east for inclusion in the wilderness system. Furthermore, it was believed a wholesale exclusion of these areas would negate the purposes of a wilderness study program and that the Congress should have the opportunity to study as many areas as possible despite the mixed ownership problem.

Some information has been provided to the Congress since RARE II

The Chairman, Senate Energy and Natural Resources Committee, requested and received information from the Forest Service on private minerals and federal mineral leasing in designated and potential wilderness areas. Specifically, in November 1981, listings of private mineral rights and their development potential were provided for use in drafting wilderness legislation. Forest Service officials told us that this information, although helpful, is incomplete because it does not contain ranges of estimated acquisition costs for private mineral rights.

Forest Service officials recognize that a need exists for information on private mineral rights and their estimated acquisition costs in eastern wilderness areas. These officials stated that additional information regarding private mineral rights could be developed because Forest Service is reevaluating its RARE II wilderness recommendations.

Forest Service is Reevaluating its Wilderness Recommendations

In February 1983, the Assistant Secretary of Agriculture announced that the national forest roadless areas studied for wilderness potential under RARE II would be subject to

reevaluation because of a court decision[3] that the RARE II environmental statement was inadequate for 46 RARE II areas in California classified as nonwilderness. Forest Service officials believe that as a result of this court ruling about 39 million acres of roadless areas nationwide classified as nonwilderness under RARE II could be subject to similar lawsuits. Therefore, a reevaluation of the RARE II study recommendations has begun to avoid further litigation.

The reevaluation will include all roadless areas nationwide previously recommended for wilderness and all other areas which had not been recommended. It is estimated to cost between $15 million and $30 million and will be done as part of Forest Service's land use planning process. The planning process for eastern national forests is scheduled for completion in 1985.

Citing our then on-going review in an April 1983 memorandum, the Forest Service's Regional Supervisor in the eastern region directed forest supervisors to develop information regarding private mineral ownership and estimated ranges of acquisition costs. According to the Acting Regional Supervisor, this information could be useful to the Congress in forthcoming deliberations on eastern wilderness legislation.

CONCLUSIONS

We believe that the Congress should have the opportunity to consider as many areas as possible for inclusion in the wilderness

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[3]In June 1979, the State of California initiated a lawsuit concerning the RARE II wilderness and nonwilderness allocations in the State of California. The State and various environmental organizations claimed in the lawsuit that the RARE II Environmental Impact Statement (EIS) was legally flawed with respect to 47 California roadless areas which had not been recommended for wilderness. On January 8, 1980, the U.S. District Court for the Eastern District of California agreed, finding that the EIS for RARE II was inadequate under the National Environmental Policy Act. The Court's ruling said that a more site-specific analysis of wilderness qualities was required for the 47 areas. The Court additionally found flaws in the RARE II analysis process. As a result, the court enjoined activities in the 47 RARE II inventoried areas in California pending preparation of an adequate environmental impact statement. The United States appealed the decision to the United States Court of Appeals for the Ninth Circuit. In the interim, the Forest Service complied with the injunction on developmental activities in the 47 areas. On October 22, 1982, the Ninth Circuit Court of Appeals affirmed the District Court rulings that found the major deficiencies of the EIS were failure to adequately address site-specific impacts, lack of an adequate range of alternatives, and failure to provide sufficient opportunities for public comment. The Appeals Court, however, reversed the District Court ruling on three issues including one that charged the Forest Service improperly changed its announced method of evaluating public comment.

system including areas with private mineral rights. However, we also believe that the Congress must have all the information necessary to make an informed decision; therefore, we believe that the Forest Service should have provided information regarding private mineral rights with its RARE II wilderness recommendations. Specifically, we believe that Forest Service's RARE II recommendations should have included information regarding the extent of private mineral ownership, the potential for private mineral development in these areas, the limits of Forest Service's ability to regulate private mineral development, and ranges of estimated acquisition costs for private mineral rights.

We believe that consideration of private mineral rights is important in the wilderness decisionmaking process. The current reevaluation of the RARE II recommendations offers the Forest Service the opportunity to correct a major weakness with that data by supplementing it with information regarding private mineral rights, including estimated costs associated with private mineral acquisitions. We are not suggesting that the Forest Service undertake a costly mineral evaluation program, but we believe that ranges of estimated acquisition costs could be developed and, if properly qualified, could be very useful to the Congress. Further, we believe the Forest Service should identify for the Congress those areas being considered for wilderness where it believes private mineral rights could negatively affect wilderness management because of current or future development potential.

As discussed, one Forest Service regional office has directed its Forest Supervisors to develop this data. We believe this information should be developed by Forest Service's southern and eastern regions in particular, because they are involved with recommending eastern areas with private mineral rights for wilderness designation.

RECOMMENDATIONS TO THE SECRETARY OF AGRICULTURE

Because the Forest Service did not analyze the potential problems or costs associated with private mineral rights when it developed its 1979 wilderness recommendations, GAO recommends that the Secretary direct the Forest Service's southern and eastern regional offices to do this type of analysis when reevaluating its wilderness recommendations. This analysis should include for each area consideration of private mineral development potential, the government's ability to control mineral development if it occurs, the need to acquire private mineral rights, and a range of estimated acquisition costs.

For those areas already included in legislative proposals being considered by the Congress for wilderness designation, the scheduled 1985 completion data for the reevaluation may come after congressional action. GAO recommends, therefore, that analyses of these particular areas be provided to the Congress prior to their deliberations.

AGENCY COMMENTS AND OUR EVALUATION

Comments on a draft of this report were received from the Department of Agriculture (app. IV) and the Department of the Interior (app. V).

Agriculture generally agreed with our findings. However, Agriculture contends that much of the analysis concerning private mineral rights that we recommend is already being done under existing regulations. We have reviewed these regulatory requirements and found that they do not require the analysis envisioned by our recommendation. The analysis required by the regulations pertains largely to federal minerals, rather than to private mineral rights. Further, during our review Forest Service officials told us that they were not sure if information regarding private mineral rights was being developed. As stated on page 25, the Forest Service's eastern regional supervisor recognized the need to develop this data during our review and directed the region's forest supervisors to develop it. However, as of June 1984, Forest Service officials were unsure if the information was being developed.

Agriculture supports our conclusion regarding the need for estimates of potential acquisition costs for private mineral rights but expressed concern about making such information public knowledge because it could provide a basis for litigation by private mineral owners. Further, Agriculture contends that attempts to publicly value private mineral rights could be construed as an invasion of privacy or an attempt by the government to establish a price for private mineral rights. To avoid this problem, Agriculture suggests a listing of the per acre selling price of comparable mineral rights, using the highest and lowest prices as an indication of estimated values.

Based on our discussions with land acquisition officials in the Departments of Agriculture, Interior, and Defense, we believe that development of a range of estimated acquisition costs would not pose the same public disclosure problems as site-specific cost estimates. Agriculture's suggestion appears to be one method of developing cost estimates while avoiding the disclosure problems cited above and, if pursued, could be a means of satisfying our recommendation. Other means of developing this data may also exist.

Interior believes that our report was generally factually correct and comprehensive and suggested some minor technical changes. Changes were made to the text where appropriate. Interior noted that two issues, bidding rights and valuation of private mineral rights, have not been well developed in GAO reports or legislation. The issue of bidding rights or monetary credits, although identified as a potential problem in our review, was not in the original scope of our work and will be addressed in a separate GAO report. Contrary to Interior's view on valuation, chapter 2 of this report discusses in detail the problems the

Forest Service has encountered in valuing private mineral rights in certain eastern wilderness areas.

Interior also noted that because of advice and guidance from its Solicitor certain areas under consideration as contiguous to the Cranberry Wilderness Area were eliminated. This information has been added to the text of the report (see p. 13.)

A DISCUSSION OF

THE FEDERAL GOVERNMENT'S AUTHORITY TO CONTROL

DEVELOPMENT OF PRIVATE MINERAL RIGHTS

This appendix discusses the different classifications of private mineral rights and the range of federal and state laws available to assist Forest Service officials in controlling their development.

Except condemnation authority for areas designated under the Eastern Wilderness Act of 1975, current wilderness legislation provides no additional authority to assist surface management agencies in protecting wilderness values from development of private mineral rights. However, if private mineral development occurs in eastern wilderness areas, the federal government can regulate it to some extent. To regulate private mineral rights, federal land managers must rely principally on terms and conditions in the original deed of sale, which determines the extent and nature of the property rights, and applicable state and federal law and regulations, which establish limits on the use of the property rights. Because of the variations in deeds and state laws, the government's authority to regulate mineral rights varies greatly.

Under the laws of many states, a mineral estate that has been separated from the surface is legally considered to be the "dominant estate" and the surface is "servient." The owner of a mineral estate has either an explicit or implied right of entry or access to minerals over and through the surface. In many instances, federal and state courts have construed the reservation of a mineral estate as investing in the mineral estate owner the right to destroy the surface, although the owner of the mineral estate does owe certain duties to the surface owner such as not committing waste and restraining from unreasonable interference. The mineral estate usually carries with it the right to use as much surface as may be reasonably necessary to reach and remove the minerals.

However, each property right must be examined separately to determine whether the owner proposing to develop private mineral rights is the actual owner and to what extent the surface above the mineral deposit may be used. The specific language found in deeds creating separate estates, combined with state laws governing property rights, provides the basis for determining the nature and extent of the rights for each mineral estate owner.

OUTSTANDING AND RESERVED MINERAL RIGHTS

Private mineral rights are classified by the Forest Service as either outstanding or reserved, depending on who owned the rights when the federal government acquired the surface. Outstanding mineral rights are those which have been previously separated from the surface estate and are owned by a third party

other than the seller of the surface estate to the federal government. With outstanding mineral rights, the Forest Service must accept those restrictions to protect surface values which may have been included in the original deed separating the mineral estate from the surface. The Forest Service has the same rights and duties as any other surface owner in a state. The terms of the deed can vary greatly and, consequently, so do the protections the federal government can impose in particular areas.

Terms of a deed which give private mineral owners extensive rights can result in the federal government having little or no ability to control mineral development. For example, a deed for outstanding mineral rights in the Cranberry Wilderness Area in West Virginia, dated 1909, gives the owner the right to mine, excavate, and remove all coal and other minerals; construct necessary structures, including railroads, roads, air shafts and openings, without being liable for injury or damage to the surface; and use the surface around each mine or opening as may be "necessary or convenient" for related mining activities. As discussed in chapter 2, this area was recently designated as wilderness, and the enabling legislation provides for acquisition of the private mineral rights.

Reserved mineral rights are rights which a seller owned and retained when selling the surface rights to the federal government. The federal government has some administrative control over mineral-related activities associated with reserved mineral rights. Forest Service lands which were acquired by the federal government under the Weeks Act of 1911 are subject to the rules and regulations governing mineral development under that act. The private mineral rights are subject to the rules and regulations in effect at the time of purchase. Under these rules and regulations, the Forest Service can exercise limited control such as requiring special use permits for the construction of transmission lines, pipelines, right of ways, and roads on national forest lands.

STATE AND FEDERAL LAWS OFFER ADDITIONAL ASSISTANCE TO CONTROL THE EFFECTS OF MINERAL DEVELOPMENT

In addition to the protections to control development specified in the deeds for the reserved and outstanding mineral rights, the Forest Service can rely on state and federal laws and regulations to minimize the effects of mineral development in designated or potential wilderness areas. In some cases, these laws can be used to mitigate environmental impacts, prevent certain actions, allow public participation, and lengthen the time before activities are initiated. A variety of laws can affect proposals to develop private minerals, and applicable laws vary according to the mineral, location, and environmental impacts. They can affect an owner's eventual ability to exercise private mineral rights and offer assistance in mitigating any impacts associated with mineral activities.

State Laws

State laws can be very important in preventing or mitigating impairment or destruction of wilderness values due to mining. States may possess broader powers to control mining than the federal government through the use of "police powers," which gives them authority to regulate people and their use of property to protect the public health, safety, and welfare. State laws, regulations, and permit requirements can be used to protect environmental quality and other impacts associated with mining activity. However, because state laws and their enforcement are not uniform, the assistance that they give federal land managers varies in each state.

In protecting designated and potential wilderness areas, state laws and their enforcement have given different degrees of protection. For example, in Kentucky, where a permit is required for surface coal mining, the owner of reserved mineral rights in the Beaver Creek Wilderness Area had an application for a state strip mine permit turned down twice. A state agency official stated that one reason the permit was turned down is that the company had failed to honor the Forest Service request that the company comply with the mining restrictions which appear in the owner's property deed. The State of West Virginia, in order to prevent mining in the Cranberry Wilderness Study Area and to give the Congress time to designate it as a wilderness, enacted a state law in 1978 that established a 2-year moratorium on issuing state mining permits in that area. However, according to state and Forest Service officials, Pennsylvania's relatively weak laws for regulating oil and gas production are of minimal assistance to federal land managers. In the Allegheny National Forest, where 98 percent of the mineral rights are privately owned, state regulation of oil and gas includes well-plugging regulations and the Pennsylvania Clean Streams Law, as amended, which controls water pollution. A state geologist told us that there are no bonding, licensing, or other regulations which can prevent or limit oil and gas drilling.

Federal Laws

Federal land use and environmental laws sometimes can provide assistance to federal managers to limit or control the impacts associated with the development of private mineral rights. However, a court ruling involving the Beaver Creek Wilderness Area, Kentucky, found that neither the 1975 Eastern Wilderness Act nor the National Environmental Policy Act of 1969 (NEPA, Public Law 91-180) provides authority to additionally limit the rights of mineral owners beyond those rights contemplated in the original deed without just compensation.

NEPA requires federal agencies, when proposing major actions "significantly affecting the quality of the human environment," to make a detailed statement of the environmental impact of those actions. For such actions, as approving a permit or operating plan associated with the development of private mineral rights in designated or potential wilderness areas, federal agencies will

have to comply with the NEPA review process. This process requires the assessment of the environmental impact, the development of alternatives to mitigate impacts, and public participation in the decisionmaking process. The preparation of a NEPA report can delay the development of mineral resources.

The Surface Mining Control and Reclamation Act of 1977 (SMCRA, P.L. 95-87), establishes a nationwide program to protect the environment from the adverse effects of surface coal mining. Section 522 of the act has several provisions which can affect the mining of coal in potential or designated wilderness areas. Under section 522(c), petitions to designate areas unsuitable for mining may be submitted to regulatory authorities. No eastern wilderness areas have been affected by this provision, but representatives of an environmental group told us that they will try to use it in lawsuits if coal mining is permitted in eastern wilderness areas.

Forest Service officials stated that section 522(e) of SMCRA and the corresponding Office of Surface Mining (OSM) regulations have added confusion in efforts to protect wilderness areas. Section 522(e) states that, in order to surface mine coal in wilderness areas, a mineral owner must have had valid existing rights on August 3, 1977, the date of the act's passage. OSM rules stated that, in order to have valid existing rights, the mineral owner must have had all federal and state permits in hand on the date of the act. This "all permits" test has been modified by court ruling to say that a good faith effort must have been made to obtain all permits. The OSM rules pertaining to valid existing rights have been recently revised. What protection, if any, they may provide for wilderness areas is uncertain. A Forest Service official stated that OSM is making valid existing right determinations on mineral property in the Otter Creek Wilderness Area, West Virginia.

Other federal laws can be applied to protect environmental and historic resources. The Clean Air Act Amendments of 1977 can be used to protect the air quality of designated wilderness areas. These amendments give wilderness areas with 5,000 or more acres Class I status, which precludes virtually any change in air quality. The Federal Water Pollution Control Act, as amended, and the Safe Drinking Water Act, as amended, can affect the development of outstanding oil and gas rights for oil spill prevention and control. The Antiquities Act of 1906 establishes criminal sanctions for the unauthorized disturbance or removal of historic or prehistoric remains on federal lands. According to an Agriculture attorney, strict enforcement of the requirements of these acts could go a long way toward making many mining operations uneconomical because of the cost of environmental compliance. More people are able to enforce these laws because of "citizen suits" provisions which allow anyone to go to court to challenge an obvious violation of legal discharge standards.

THREE FEDERAL AGENCIES WHICH ADMINISTER WILDERNESS PROGRAMS HAVE ATTEMPTED TO EXCLUDE AREAS WITH PRIVATE MINERAL RIGHTS

In addition to the Department of Agriculture's Forest Service, three other agencies within the Department of the Interior--the Fish and Wildlife Service (FWS), National Park Service (NPS), and Bureau of Land Management (BLM)--administer wilderness programs. Each of these agencies has recognized the wilderness management problems posed by private mineral rights and has attempted to exclude these lands from wilderness consideration.

The 1964 Wilderness Act directed the Secretary of the Interior, within 10 years, to review for preservation as wilderness all roadless areas having 5,000 contiguous acres or more and roadless islands in the national park system and national wildlife refuges and game ranges as of September 3, 1964. The review of NPS and FWS lands nationwide is nearly completed with most areas studied and recommendations transmitted to the Congress. While the NPS and FWS wilderness review programs were separate, they did share common departmental guidelines. One departmental policy was interpreted by officials in both agencies to exclude areas with private mineral rights from recommendations for wilderness preservation. Agency officials explained that exclusion was necessary because areas with private rights could not be managed as wilderness and the agencies could not stop private owners from exercising their rights.

However, an incident in 1982, involving the Salt Creek Wilderness Area in the Bitter Lake National Wildlife Refuge, New Mexico, where a holder of a state lease tried to get permission to drill in the wilderness prior to expiration of the lease, alerted FWS officials that areas having nonfederal minerals may have been included. Consequently, FWS officials gathered data on the mineral ownership of FWS wilderness and wilderness study areas and found that they did have wilderness areas with state and privately owned minerals. Of about 523,000 acres of wilderness and wilderness study areas managed by the FWS in the east, about 37,000 acres or 7 percent overlay private and state-owned mineral rights. The largest area of privately owned minerals is a 21,417-acre tract located in the 353,981-acre Okefenokee Wilderness Area in Georgia. While the Acting Refuge Manager for the Okefenokee Wildlife Refuge told us that he was not aware of any attempts to develop private mineral rights in this wilderness area, he did indicate there was industry interest in developing federally owned minerals.

The National Park Service manages about 2.7 million acres of designated and potential wilderness in 11 eastern national parks, but according to NPS officials, none of the designated wilderness areas contains private mineral rights. However, an NPS official

stated that an 81,900-acre potential wilderness area in Everglades National Park in Florida contains 65,000 acres of private mineral rights. NPS officials told us that the mineral rights would be acquired before the area is designated as wilderness because they believed the area could not be managed as a wilderness if the private mineral rights were developed.

The BLM wilderness review program is authorized by section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). The act represents the first congressional mandate for BLM to review its land for wilderness preservation and gives the Secretary of the Interior 15 years to review roadless areas of 5,000 acres or more and roadless islands identified as having wilderness characteristics. To carry out the mandate, BLM developed a three-phase wilderness review process to identify areas with wilderness potential for the Congress. An inventory was completed on November 14, 1980, for the western states which identified 24 million acres for wilderness study. The eastern states' inventory is also complete. Agency officials stated that BLM will not recommend any eastern wilderness study areas, although the decision was not final as of April 1984.

Interior Eliminated Lands With Private Mineral Rights From Wilderness Consideration

Recognizing that the federal government's authority to regulate private mineral rights was limited, the Secretary of the Interior on December 20, 1982, directed BLM to eliminate all lands with private mineral rights--referred to as "split-estates"--from BLM's wilderness study areas. The issue of including split-estate lands was addressed in the beginning of BLM's wilderness review program. The decision was to include lands with federal surface and private subsurface in the inventory phase of the review. This policy was challenged after areas with private mineral rights were classified as wilderness study areas. A major railroad company appealed to the Department of the Interior's Board of Land Appeals (IBLA)[1] the decisions of BLM's Arizona and New Mexico state offices' designating 20 wilderness study areas with underlying private mineral rights which it owned. On May 6, 1982, the IBLA concluded that the Secretary lacks the authority to manage and preserve wilderness lands with private mineral rights and upheld the appeal. The IBLA directed the Arizona and New Mexico state offices to eliminate split-estate lands from these wilderness study areas and to redetermine whether the remaining lands should

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[1]The IBLA is a quasi-judicial review board which renders decisions on appeals pertaining to public lands and their resources.

continue to be designated as wilderness study areas. Later, the Secretary broadened this decision to exclude all lands with private mineral rights from wilderness study status.

In January 1983, six environmental organizations filed a law suit against the Secretary of the Interior's "split-estate" decision stating that his action was contrary to the intent of Congress. As of June 1984, the matter was still in litigation.

DESIGNATED AND POTENTIAL EASTERN WILDERNESS AREAS WHICH CONTAIN PRIVATE MINERALS[a]

Area name and state	Total acreage	DESIGNATED WILDERNESS				Percentage of private mineral ownership	Mineral potential	Mineral commodity
		Surface ownership		Mineral ownership				
		Federal	Private	Federal	Private			
		------(acres)-------		---------(acres)--------				
Beaver Creek (KY)	4,791	4,756	35	24	4,767	99.5	high	bituminous coal
Otter Creek (WV)	20,000	20,000	0	974	19,026	95.1	high	bituminous coal
Whisker Lake (WI)	7,428	7,268	160	528	6,900	92.9		
Shining Rock (NC)	13,350	13,350	0	1,200	12,150	91.0	medium	silica
Cranberry (WV)	36,550	36,550	0	3,815	32,735	89.6	high	bituminous coal
Rainbow Lake (WI)	6,583	6,583	0	2,254	4,329	65.8	low	
Boundary Waters Canoe Area (MN)	1,086,914	792,855	294,059	450,622	636,292	58.5		
Blackjack Springs (WI)	5,886	5,886	0	4,406	1,480	25.1		
Gee Creek (TN)	2,493	2,493	0	1,925	568	22.8	low	
Cohutta (GA-TN)	34,102	34,102	0	27,641	6,461	18.9	low	
Kisatchie (LA)	8,700	8,700	0	7,540	1,160	13.3	low	oil, gas
Laurel Fork North (WV)	6,081	6,081	0	5,281	800	13.2		
Upper Buffalo (AR)	10,542	10,242	300	9,525	1,017	9.6	low	
Bell Mountain (MO)	9,027	8,732	295	8,302	725	8.0	low	lead, zinc
Lye Brook (VT)	14,600	13,538	1,062	13,538	1,062	7.3	low	
Cheaha (AL)	6,780	6,780	0	6,300	480	7.1		
James River Face (VA)	8,703	8,703	0	8,403	300	3.4	medium	quartzite

APPENDIX III

Area name and state	Total acreage	DESIGNATED WILDERNESS Surface ownership Federal (acres)	Surface ownership Private (acres)	Mineral ownership Federal (acres)	Mineral ownership Private (acres)	Percentage of private mineral ownership	Mineral potential	Mineral commodity
Paddy Creek (MO)	6,888	6,728	160	6,728	160	2.3	low	lead, zinc, cobalt, copper, nickel, and iron
Hercules Glades (MO)	12,315	12,314	1	12,155	160	1.3		
Piney Creek (MO)	7,982	7,927	55	7,827	155	1.9	medium	lead, zinc, iron
Linville Gorge (NC)	7,575	7,575	0	7,452	123	1.6		
Rockpile Mountain (MO)	4,242	4,159	83	4,159	83	2.0	low	
Sipsey (AL)	12,726	12,646	80	12,607	119	.9	low	
Total	1,334,258	1,037,968	296,290	603,206	731,052	54.8		

APPENDIX III

Area name and state	Total acreage	RECOMMENDED WILDERNESS: Surface ownership: Federal (acres)	Surface ownership: Private (acres)	Mineral ownership: Federal (acres)	Mineral ownership: Private (acres)	Percentage of private mineral ownership	Mineral potential	Mineral commodity
Little Lake Creek (TX)	2,700	2,700	0	0	2,700	100.0		
Round Lake CSA (WI)	3,659	3,659	0	0	3,659	100.0	low	
Thompsons Island (PA)	67	67	0	0	67	100.0		
Horseshoe Bay (MI)	4,060	3,900	160	220	3,840	94.6		
Reed Brake (AL)	686	686	0	45	641	93.4	low	
Nordhouse Dunes (MI)	2,830	2,830	0	225	2,605	92.0		
Sturgeon Gorge (MI)	16,766	14,800	1,966	1,702	15,064	89.8		
Flynn Lake CSA (WI)	6,765	6,755	10	755	6,010	88.8	low	
Carp River (MI)	11,510	11,350	160	1,411	10,099	87.7		
Tracy Ridge (PA)	9,188	9,188	0	1,147	8,041	87.5		
Clifty (KY)	13,260	11,222	2,038	2,060	11,200	84.5		
Porcupine Lake (WI)	4,460	4,235	225	875	3,585	80.4		
St. Peters Dome (WI)	4,422	3,993	429	914	3,508	79.3		
Sylvania (MI)	18,329	18,329	0	4,564	13,765	75.1		
Kimball Creek (WI)	7,940	7,200	740	2,231	5,689	71.6		
Upper Kiamichi River (AR)	320	320	0	120	200	62.5		
Shelp Lake (WI)	3,490	3,470	20	1,332	2,178	62.4		
Turkey Hill (TX)	3,049	3,049	0	1,217	1,832	60.1		
Baker Island (PA)	67	67	0	27	40	59.7		
Middle Prong (NC)	7,935	7,935	0	3,935	4,000	50.4		

APPENDIX III

Area name and state	Total acreage	RECOMMENDED WILDERNESS Surface ownership Federal	Surface ownership Private	Mineral ownership Federal	Mineral ownership Private	Percentage of private mineral ownership	Mineral potential	Mineral commodity
		(acres)		(acres)				
Brasstown (GA)	7,850	7,850	0	4,000	3,850	49.0		
Garden of the Gods (IL)	4,373	3,804	569	2,284	2,089	47.8		
Brasstown (GA)	4,820	4,820	0	2,820	2,000	41.5		
Headwaters of the Pine (WI)	11,290	10,075	1,215	6,666	4,624	41.0		
Courson Island (PA)	62	62	0	37	25	40.3		
Shining Rock Addition (NC)	5,124	5,124		3,124	2,000	39.0		
Southern Nantahala (NC)	3,130	3,130	0	2,130	1,000	31.9		
Little Wilson Creek (VA)	3,515	3,470	45	2,515	1,000	28.4		
Southern Nantahala (GA)	14,570	14,570	0	10,670	3,900	26.8		
Black Creek (MS)	4,560	4,520	40	3,560	1,000	21.9		
Bald Knob (IL)	6,209	5,850	359	4,866	1,343	21.6		
Clear Springs (IL)	4,777	4,717	60	3,855	922	19.3		
Birkhead Mountains (NC)	5,759	4,790	969	4,759	1,000	17.4		
Southern Nantahala (NC)	9,143	7,743	1,400	7,577	1,566	17.1		

APPENDIX III

Area name and state	Total acreage	RECOMMENDED WILDERNESS Surface ownership Federal (acres)	Private (acres)	Mineral ownership Federal (acres)	Private (acres)	Percentage of private mineral ownership	Mineral potential	Mineral commodity
Beartown (VA)	5,007	4,255	752	4,210	797	15.9		
Linville Gorge Addition (NC)	876	876	0	696	180	20.5	low	
St. Mary's (VA)	10,100	10,100	0	9,100	1,000	9.9		
Raven Cliff (GA)	9,330	9,330	0	8,730	600	6.4	low	
Black Fork Mountain (OK)	4,752	4,072	680	4,452	300	6.3		
Black Fork Mountain (AR)	7,568	7,488	80	7,268	300	4.0	low	oil & gas
Little Lake George (FL)	3,040	3,040	0	2,960	80	2.6		
Juniper Prarie (FL)	13,260	13,222	38	12,960	300	2.3		
Peter's Mountain CSA (VA)	4,290	4,290	0	4,190	100	2.3	medium	iron
Upper Kiamichi River (OK)	10,090	8,852	1,238	9,890	200	2.0		
Sipsey Addition (AL)	5,309	5,309	0	5,209	100	1.9	low	
Hurricane Creek (AR)	15,177	15,057	120	15,057	120	.8		
Total	295,484	282,171	13,313	166,365	129,119	43.7		

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FURTHER PLANNING AREAS

Area name and state	Total acreage	Surface ownership		Mineral ownership		Percentage of private mineral ownership	Mineral potential	Mineral commodity
		Federal	Private	Federal	Private			
		------(acres)-------		---------(acres)--------				
Clarion River (PA)	4,042	3,440	602	0	4,042	100.0	high	oil, gas,& coal
Hickory Creek (PA)	9,427	9,337	90	0	9,427	100.0	high	oil & gas
Four Notch (TX)	5,605	5,605	0	0	5,605	100.0	medium	oil & gas
Allegheny Front (PA)	8,696	7,424	1,272	454	8,242	94.8	high	oil & gas
Graham Creek (TX)	7,766	7,766	0	777	6,989	90.0	medium	oil & gas
Cornplanter (PA)	3,012	3,012	0	350	2,662	88.4	high	oil & gas
Southern Massanutten (VA)	11,800	11,800	0	3,540	8,260	70.0	low	
Devils Fork (VA)	5,887	4,759	1,128	2,020	3,867	65.7	high	bituminous coal
Pond Mountain (TN)	4,368	4,365	3	1,548	2,820	64.6	low	
Big Sandy (AL)	3,190	2,879	311	1,755	1,435	45.0	low	
Burden Falls (IL)	3,658	2,999	659	1,999	1,659	45.4	low	
Flint Mill (TN)	7,183	7,166	17	3,951	3,232	45.0	low	
W. Elliot Creek (AL)	4,237	3,264	973	2,330	1,907	45.0	low	
Lusk Creek (IL)	6,737	5,903	834	4,208	2,529	37.5	high	fluorspar
Ramsys Draft Addition (VA)	13,475	13,475	0	8,597	4,878	36.2	low	
Tray Mountain (GA)	36,300	36,300	0	23,742	12,558	34.6	high	olivine
Chambers Ferry (TX)	4,817	4,661	156	3,180	1,637	34.0	medium	coal,oil& gas

APPENDIX III

Area name and state	Total acreage	FURTHER PLANNING AREAS: Surface ownership Federal (acres)	Surface ownership Private (acres)	Mineral ownership Federal (acres)	Mineral ownership Private (acres)	Percentage of private mineral ownership	Mineral potential	Mineral commodity
Chattahoochee River (GA)	23,050	22,900	150	16,259	6,791	29.5	low	
Rabbittown Contiguous (AL)	545	545	0	385	160	29.4	low	
Pond Mountain Addition (TN)	2,300	2,300	0	1,660	640	27.8	high	niobium, tantalum
Hemp Top (GA)	2,800	2,800	0	2,268	532	19.0	low	
Blood Mountain (GA)	10,275	10,245	30	9,083	1,192	11.6	low	
Mt. Wolf-Gordon Pond (NH)	12,379	11,179	1,200	11,179	1,200	9.7	low	
Richland Creek CSA (AR)	2,100	2,100	0	1,900	200	9.5	low	oil & gas
Adam's Gap (AL)	2,520	2,270	250	2,344	176	7.0	low	
Montgomery-Borden Creek (AL)	7,411	7,061	350	6,956	455	6.1	low	
Devils Den (VT)	8,830	8,830	0	8,330	500	5.7	medium	uranium
Mountain Lake CSA (VA)	11,827	10,228	1,599	11,276	551	4.7	medium	iron
Rich Mountain (GA)	16,880	16,280	600	16,115	765	4.5	low	
Belle Starr West (AR)	5,560	5,300	260	5,431	129	2.3	high	
Brushy Fork (AL)	4,055	3,861	194	3,965	90	2.2	low	
Richland Creek (AR)	10,143	10,076	67	9,977	166	1.6	low	oil & gas

APPENDIX III

Area name and state	Total acreage	FURTHER PLANNING AREAS: Surface ownership Federal (acres)	Surface ownership Private (acres)	Mineral ownership Federal (acres)	Mineral ownership Private (acres)	Percentage of private mineral ownership	Mineral potential	Mineral commodity
Irish Wilderness (MO)	17,562	17,322	240	17,322	240	1.4	high	lead,zinc, copper, cobalt, silver
Belle Starr Cave CSA (AR)	6,036	5,970	66	6,009	27	.4	medium	natural gas
Total	284,473	273,422	11,051	188,910	95,563	33.6		

[a]On June 19, 1984, the President signed legislation which created 15 additional wilderness areas (Breadloaf, Big Branch, Peru Peak, George D. Aiken Wildernesses in Vermont; Headwaters and Porcupine Lake Wildernesses in Wisconsin; Pemigewasset and Sandwich Range Wildernesses in New Hampshire; and Birkhead Mountain, Catfish Lake South, Middle Prong, Poscosin, Pond Pine, Sheep Ridge, and Southern Nanthahala in North Carolina). This legislation also expanded 6 areas (Lye Brook Wilderness in Vermont; Presidential Range-Dry River Wilderness in New Hampshire; and Ellicott Rock, Joyce Kilmer-Slickrock, Linville Gorge, and Shining Rock Wildernesses in North Carolina). Because of the unavailability of reliable acreage data for these new areas, the changes have not been reflected in these charts.

APPENDIX III

United States Department of Agriculture
Forest Service
Washington Office
12th & Independence SW
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APPENDIX IV

Reply to: 1420 GAO Audits

Date: APR 12 1984

Subject: GAO Draft Report RCED-84-101

To: J. Dexter Peach, Director
Resources, Community and Economic
Development Division
General Accounting Office
Washington, D.C. 20548

Forest Service would like to make the following comments to the GAO draft report on Private Mineral Rights:

Generally, we agree with GAO's findings. However, we do not believe that it is necessary that the Secretary direct the Forest Service to do the analyses that you recommend because such analyses are already being conducted as part of the Forest planning process required by regulations at 36 CFR Part 219.22. These regulations require the following mineral resource information to be considered in Forest planning, which (with possibly one exception discussed below) meets or exceeds GAO's recommendations:

(a) active mines in the planning area;
(b) outstanding or reserved mineral rights;
(c) the probable occurrence of various minerals including locatable, leasable, and common variety;
(d) the potential for future mineral development and potential need for withdrawal of areas from development;
(e) access requirements for exploration and development; and
(f)probable effects of renewable resource management on mineral resource activities.

The ongoing Forest planning effort addresses roadless area reevaluation needs, and among other requirements, also includes mineral resource analyses of the type recommended by GAO in its report. However, direction in 36 CFR Part 219.22 is not specific that analysis include a range of estimated potential acquisition costs if mineral rights must be acquired to protect wilderness values. But, since 36 CFR Part 219.22(d) requires consideration of the potential need for withdrawal of areas from mineral development, and since Forest planning attempts to maximize net public benefits, analysis would be required to estimate mineral rights acquisition costs for Forest plan alternatives containing recommendations for withdrawals from mineral development. An Action Plan relating to minerals management in Region 9 (copy enclosed)*identifies the requirements for such an analysis. Similar direction could be given explicitly to Region 8 if, upon program or activity review, it is determined that Forest planning is not consistent with direction in 36 CFR Part 219.22.

*NOTE: Enclosure deleted from GAO report

While we support the need for estimates of potential acquisition costs of private mineral rights, we question the advisability of making this information public prior to purchase negotiations with prospective sellers. Attempts to estimate values for the reserved or outstanding mineral interests would be extremely speculative and could provide a basis for litigation by the mineral owner. Also, such attempts to publicly value a private interest could be construed as an invasion of privacy. In addition, the United States could be charged with establishing values for private mineral estates in and under private lands adjacent to National Forests or within proclaimed boundaries. Based upon past experience, Forest Service attempts to value mineral interests without a thorough knowledge of the volume (tonnage and grade) of mineral has produced much controversy. Furthermore, we anticipate few cases when the United States would acquire the mineral rights, preferring instead to do everything practical to minimize the impacts of mineral operations.

The report provided in the Beaver Creek Wilderness Area (Kentucky) situation is a good example of how premature release of acquisition costs have complicated negotiation procedures. Accordingly, and as an alternative to providing a range of acquisition costs, we suggest a listing of the per acre selling prices of comparable mineral rights, and as an indication of estimated value use of the highest and lowest prices.

R. MAX PETERSON
Chief

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. J. Dexter Peach
Director, Resources, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

APR 17 1984

Dear Mr. Peach:

The Department of the Interior offers the following general comments in response to the draft GAO report to Congress entitled "Private Mineral Rights Complicate the Management of Eastern Wilderness Areas." Enclosed are specific comments to the text of this report.*

The potential development of private minerals in Eastern Wilderness Areas presents various problems to the management of the wilderness areas. The most direct solution, as discussed in the draft report, is acquisition of the mineral rights by the Federal Government. However, we concur with GAO's judgment that acquisition ". . .can be complicated because, unlike surface rights, it is impossible to see or know exactly what the private owner is selling and the Government is buying."

Specifically, there are two issues remaining to be addressed clearly:

1) Bidding Rights (credits, etc.): Essentially, these represent the circumvention of regular budgeting processes. The questions of tax implications and interstate transfer have not been well developed in GAO reports or in legislation.

2) Valuation: Once land has been designated as wilderness, the value has, in fact, been taken. No possibility of bidding to establish fair market value exists. Valuation must depend on company estimates which are open to verification. However, the ability to verify has been limited by the fact that exploratory drilling is prohibited by both legislation and budget.

Accurate evaluation of minerals on a wilderness area is difficult when insufficient data are available to use as a basis for evaluation. Although much data were available for evaluation of minerals in the Cranberry Wilderness, we do not conclude that similar information will be available to the Government for other wilderness areas. However, the Bureau of Land Management's future evaluations of wilderness area minerals can result in valid

*NOTE: Enclosure deleted from GAO report

and reliable estimates of fair market value, given the reasonable availability of information to the Bureau. For example, private sector corporations, interested in the development of wilderness area minerals, must submit comprehensive plans which include reserve estimates based on their data (e.g., Otter Creek). These data may be used by the Government as the basis for evaluation.

In that section of the report entitled "Problems with Acquiring and Managing Private Mineral Rights," GAO discusses compensation for lost tax revenue. Public Law 97-466 authorizes the Secretary to pay ". . .up to $2.2 million to the two counties where the Cranberry Wilderness is located to compensate them for lost tax revenue." (See Page 13.) The GAO states, "At the time of our review, no one was sure what the final cost to acquire the private minerals rights will be." In November 1983, Pocahontas and Webster Counties were compensated by the Federal Government in the amount of $2.2 million. Compensation awarded to local government, as payment in lieu of taxes, is an additional expense that the Government may routinely incur toward acquiring private minerals. Given similar awards to State governments, routine expenses will escalate further.

Purchase of those lands contiguous to wilderness areas can greatly increase the total cost and difficulty of acquiring private minerals. Resulting from advice and guidance received from the Solicitor of the Department of the Interior about the legal definition of "contiguous," some of the areas under consideration as contiguous to the Cranberry Area were eliminated from consideration by the Bureau, because of the associated expense. This decision therefore, resulted in elimination of certain costs associated with acquisition.

Legislative solutions which allow buyout to precede designation, or which allow development of mineral resources within wilderness, would remove much of the existing problem.

We believe the GAO draft report is generally factually correct and comprehensive. Thank you for the opportunity to comment.

Sincerely,

Assistant Secretary for
Land and Minerals Management

Enclosure

APPENDIX VI

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COMMITTEE ON
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WASHINGTON, D.C. 20510

March 16, 1983

The Honorable Charles A. Bowsher
Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20541

Dear Mr. Bowsher:

The expansion of the National Wilderness Preservation System continues to generate considerable congressional interest and action. Recently, much debate and controversy has resulted from proposals to expand the wilderness system in the eastern United States because of privately owned mineral rights, Federal mineral lease applications, and outstanding Federal mineral leases. This debate and controversy was recently highlighted by two eastern wilderness bills which passed in the final days of the 97th Congress, relating to the Cranberry Wilderness area, West Virginia, and the Osceola National Forest, Florida. These bills contained provisions to acquire privately owned mineral rights and the rights to Federal leases, the value of which was estimated at $40 million and $200 million, respectively. The President signed the Cranberry legislation into law but vetoed the Osceola legislation, which has already been reintroduced in the House. I expect additional wilderness legislation for eastern states containing similar acquisition provisions to be considered during this Congress.

I understand that GAO is presently examining the problems with privately owned mineral rights in proposed and designated eastern wilderness areas. I request that you continue this effort, including an examination of the problems related to Federal leasing, because a GAO report on the subject would assist the Committee in its deliberations on eastern wilderness legislation. Specifically, I would like information regarding: (1) identification of potential eastern wilderness areas with problems resulting from privately owned mineral rights, and Federal leasing, including a discussion of mineral deposits and potential acquisition costs; (2) current problems with managing and acquiring private mineral rights and Federal leases, in designated eastern wilderness areas; and (3) a discussion of less costly alternatives or options available to the Federal Government to resolve conflicts.

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